

REMARKS

By the above actions, claims 1 and 11 have been amended further. In view of these actions, discussion held with the Examiner at a personal interview conducted on January 13, 2005, and the following remarks, further consideration of this application is now requested.

With regard to the Examiner's refusal once again to consider the prior art German Utility Model G 92 14 821.2 which was submitted with applicant's August, 2003, information disclosure statement, it is noted that the Examiner has not explained why she does not consider the statement provided that "[t]his document shows detachable attachment of a handgrip 11 to the flexible material of a vehicle roof cover 3 (Figs. 2a and 3a). However, it does not show attachment of a fabric top material to its mounting frame" to be a concise statement of relevance that fully complies with 37 CFR § 1.98(a)(3), and in the absence of such, it is submitted that this reference should be considered and made of record. Likewise, the Examiner has failed to consider French reference 1 547 501; however, since this reference is listed on an international type search report as a category "X" reference and MPEP § 609 A(3) states:

Where the information listed is not in the English language, but was cited in a search report or other action by a foreign patent office in a counterpart foreign application, the requirement for a concise explanation of relevance can be satisfied by submitting an English-language version of the search report or action which indicates the degree of relevance found by the foreign office. This may be ... merely an "X", "Y", or "A" indication on a search report.

Thus, the Examiner's failure to consider should consider the French reference for which a search report from a foreign counterpart patent application designating it to be a category "X" references is in contravention to established PTO policy. Accordingly, the Examiner is requested to make French reference 1 547 501 and German Utility Model G 92 14 821.2 officially of record, for which purpose a new Form 1449 is appended to this response.

As for the Examiner's objection to the specification and rejection of claims 1 & 11 under 35 U.S.C. § 112, due to new matter, this basis therefore was discussed with the Examiner at the noted interview. In particular, it was pointed out that nothing had been added to the specification which related to the basis set forth by the Examiner, and that,

since the language of claims 1 & 11 literally encompassed the disclosed embodiments, it should not be considered new matter, especially since anyone of any skill in the art would realize from the disclosure that it makes no difference as to which of the comb-shaped parts has the openings and which as the projections. However, in order to expedite examination, claims 1 & 11 have been amended above into a more generic form with claims 21 & 22 being added directed to the specific arrangement of the illustrated embodiments. Inasmuch as the Examiner indicated that such action would eliminate the issues under § 112, withdrawal thereof is in order and is hereby requested.

As for the rejection by the Examiner under 35 U.S.C. § 102 based on the disclosure of the Ferguson patent, it is understood from the discussions with the Examiner that this rejection was made subject to the extent that the claims were not considered to contain new matter, and that, with the revisions made and elimination of the § 112 issues, this rejection would be withdrawn. Accordingly, withdrawal of the rejection based on the Ferguson patent is now requested.

It is understood that the Examiner will be conducting an updated search; but, in the absence of any new and more pertinent prior art being found, this application should now be in condition for allowance. While the present application is now believed to be in condition for allowance, should the Examiner find some issue to remain unresolved, or should any new issues arise, which could be eliminated through discussions with applicant's representative, then the Examiner is invited to contact the undersigned by telephone in order that the further prosecution of this application can thereby be expedited.

Respectfully submitted,

By: 

David S. Safran
Registration No. 27,997

NIXON PEABODY LLP
401 9th Street, N.W., Suite 900
Washington, DC 20004-2128

Telephone: (703) 827-8094
DSS:kmm
W630340.1